

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000426-001 DT

11/09/2011

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT

H. Beal

Deputy

STATE OF ARIZONA

ERIC SPEELMON

v.

SUHAYLAH KUATHAR SHAMSIDDEEN (001) SUSAN H HAWKINS

MESA MUNICIPAL COURT
HON J MATIAS TAFOYA-PRESIDING
JUDGE
PAUL THOMAS-COURT
ADMINISTRATOR
MESA MUNICIPAL COURT
250 W 1ST AVENUE
MESA AZ 85210-1442
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 2010-068020.

Defendant-Appellant Suhaylah Shamsiddeen (Defendant) was convicted in Mesa Municipal Court of criminal damage. Defendant contends (1) the evidence was not sufficient to support the verdict, (2) she was denied due process, and (3) the trial court abused its discretion in imposing sentence. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On August 19, 2010, Defendant was cited for criminal damage, A.R.S. § 13-1602(A)(1). Prior to trial, Defendant did not file any motions. At trial, Carl Edward Glenn, Jr., testified Defendant was his ex-girlfriend. (R.T. of Jan. 11, 2011, at 3.) He testified that, on August 19, 2010, at about 9:00 p.m. he and Defendant had an argument. (*Id.* at 4.) He had allowed Defendant to look at his Blackberry cell phone, and she saw on it a text message from one of Mr. Glenn's female friends. (*Id.* at 4-6.) This led Defendant to believe Mr. Glenn was cheating on her. (*Id.* at 6.) As a result, Defendant threw Mr. Glenn's Blackberry to the ground, causing the screen to stop working. (*Id.* at 6-7.) That Blackberry cost \$200 to \$300. (*Id.* at 4.) On cross-examination, Mr.

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Glenn admitted he broke the strap on Defendant's purse, which happened when he tried to get back from Defendant his house key that he had given her. (*Id.* at 12–14.)

Officer Patrick Carroll testified he spoke to Mr. Glenn about the Blackberry cell phone on August 19, 2010. (R.T. of Jan. 11, 2011, at 15–16.) He said Mr. Glenn told him Defendant hit the Blackberry against the wall several times and then dropped it to the floor. (*Id.* at 16.) Officer Carroll described the damage to the wall that he saw. (*Id.* at 16–17.) He said the screen of the Blackberry came up white, thus the phone was not working. (*Id.* at 17.) He said Mr. Glenn told him he did not damage Defendant's purse. (*Id.* at 18.)

Officer Connolly testified he spoke to Defendant on August 19, 2010. (R.T. of Jan. 11, 2011, at 20–22.) He said Defendant said she hit Mr. Glenn's phone against the wall. (*Id.* at 22.) Defendant said she saw something on the phone she did not like, so she threw the phone. (*Id.* at 23–25.) The State then rested. (*Id.* at 26.)

Defendant testified she tossed Mr. Glenn's phone on the couch. (R.T. of Jan. 11, 2011, at 27–28.) She said Mr. Glenn hit the phone against the wall. (*Id.* at 29.) She said she ran out of the apartment and Mr. Glenn ran after her, and when he caught up with her, he grabbed her purse. (*Id.* at 29–30.) Defendant then rested. (*Id.* at 40.)

After hearing the testimony, the trial court said it found Mr. Glenn to be credible, and it found Defendant had a motive not to tell the truth, and so it found Defendant guilty. (R.T. of Jan. 11, 2011, at 43.) The trial court then imposed sentence. (*Id.* at 45.) The State provided the trial court with documents showing Defendant had two prior convictions. (*Id.* at 45–46.) The trial court imposed 30 days in jail, but said Defendant could be on work-release so she could attend school. (*Id.* at 48.) On January 12, 2011, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES.

A. Did the State present sufficient evidence to support the verdict.

Defendant contends the State did not present sufficient evidence to support the verdict. In addressing the issue of the sufficiency of the evidence, the Arizona Supreme Court has said the following:

We review a sufficiency of the evidence claim by determining “whether substantial evidence supports the jury’s finding, viewing the facts in the light most favorable to sustaining the jury verdict.” Substantial evidence is proof that “reasonable persons could accept as adequate . . . to support a conclusion of defendant’s guilt beyond a reasonable doubt.” We resolve any conflicting evidence “in favor of sustaining the verdict.”

State v. Bearup, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). When considering whether a verdict is contrary to the evidence, this court does not consider whether it would reach the same conclusion as the trier-of-fact, but whether there is a complete absence of probative

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facts to support its conclusion. *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988). In the present case, the State presented testimony that Defendant threw Mr. Glenn's cell phone against the wall and on the floor, causing the screen to stop working. This Court concludes that was sufficient evidence to support the guilty verdict.

Defendant notes there was a conflict in the testimony. In addressing the role of an appellate court in reviewing conflicting evidence and testimony, the Arizona Supreme Court has said the following:

Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers and witnesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to "look over the shoulder" of the trial judge and, if appropriate, substitute our judgment for his or hers.

State v. Chapple, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). The trial court said it found Mr. Glenn to be credible, and it found Defendant had a motive not to tell the truth. Because this issue involves "an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge" rather than a "question . . . of law or logic," it is not appropriate for this Court to "substitute [its] judgment for that of the trial judge."

B. *Did Defendant properly present either a due process argument of an equal protection argument to the trial court.*

Defendant contends she was denied due process because the State did not charge Mr. Glenn with criminal damage as a result of what he did to her purse. Absent fundamental error, failure to raise an issue at trial waives the right to raise the issue on appeal. *State v. Gendron*, 168 Ariz. 153, 154, 812 P.2d 626, 627 (1991); *State v. Gatliff*, 209 Ariz. 362, 102 P.3d 981, ¶ 9 (Ct. App. 2004). Fundamental error is limited to those rare cases that involve error going to the foundation of the defendant's case, error that takes from the defendant a right essential to the defendant's defense, and error of such magnitude that the defendant could not possibly have received a fair trial, and places the burden on the defendant to show both that error existed and that the defendant was prejudiced by the error. *State v. Soliz*, 223 Ariz. 116, 219 P.3d 1045, ¶ 11 (2009). It is particularly inappropriate to consider an issue for the first time on appeal when the issue is a fact intensive one. *State v. Rogers*, 186 Ariz. 508, 511, 924 P.2d 1027, 1030 (1996); *State v. West*, 176

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Ariz. 432, 440–41, 862 P.2d 192, 200–01 (1993). Rather than due process, Defendant seems to be raising a claim of equal protection. Whether this is a claim of a denial of due process or a denial of equal protection, it is a fact-intensive issue, and thus not suitable for consideration for the first time on appeal. If Defendant had presented this claim to the trial court, it could have held a hearing to determine whether the State made its charging decisions based on any improper reasons, and could have presented to this Court a record on this issue. Because Defendant did not present this issue to the trial court, this Court has no record, thus it is inappropriate to consider Defendant's claim for the first time on appeal.

C. Did the trial court abuse its discretion in imposing 30 days in jail.

Defendant contends the trial court abused its discretion in imposing on her 30 days in jail. As long as the sentence imposed is within the range permitted by statute, the sentence imposed within that range is within the trial court's discretion, and this Court will not disturb the trial court's sentence absent an abuse of that discretion. Here the trial court imposed a sentence within the statutory range. The only claim of unfairness is that Mr. Glenn was not tried for something and given some sort of sentence. As noted above, Defendant never presented that claim to the trial court, thus there is no record on this issue. Defendant thus has failed to support her claim of an abuse of discretion.

III. CONCLUSION.

Based on the foregoing, this Court concludes (1) the evidence was sufficient to support the verdict, (2) Defendant waived any claim of a denial of due process or equal protection by not raising that issue with the trial court, and (3) the trial court did not abuse its discretion in imposing sentence.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Mesa Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Mesa Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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